

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

RAMON VILLANUEVA-BAZALDUA)	
individually and on behalf of other)	
similarly situated,)	Civil Action No. 06-185 (GMS)
)	
Plaintiff,)	
)	
v.)	
)	
TRUGREEN LIMITED PARTNERS)	
and TRUGREEN, INC. d/b/a)	
TRUGREEN CHEMLAWN,)	
)	
Defendants.)	

**DEFENDANT'S UNOPPOSED MOTION FOR LEAVE TO FILE
A SUR-REPLY BRIEF IN FURTHER OPPOSITION TO PLAINTIFF'S
MOTION FOR CLASS CERTIFICATION**

Defendants respectfully request leave to file a Sur-Reply Brief in Further Opposition to Plaintiff's Motion for Class Certification (Docket No. 73) ("Motion for Class Certification") for the following reasons:

1. On September 21, 2007, Plaintiff filed a Motion to Certify a Class (Docket No. 73). Defendant filed its timely Opposition (Docket No. 76) on October 26, 2007. Plaintiff requested from Defendant additional time to file a Reply Brief, to which counsel for Defendant agreed. Accordingly, on November 20, 2007, Plaintiff filed a forty-page Reply Brief (Docket No. 79).

2. Contemporaneously with his Reply Brief, Plaintiff also filed a Motion for Leave to File Excess Pages (Docket No. 78). Although Defendant has agreed not to oppose that

Motion, the significant breadth of Plaintiff's Reply highlights why Defendant should be entitled to a limited sur-reply opportunity.¹

3. Moreover, the issues Plaintiff has attempted to put before the Court in this case are somewhat novel, and the case is at a critical juncture. Indeed, the jurisdictional issues alone should be dispositive of this case. Further, it is now abundantly clear from Plaintiff's Reply that he is continuing his effort to legislate H2-A regulations and standards into the H-2B arena, and the impact of any RICO claim still is not clear. Finally, Plaintiff's Reply Brief has revealed additional legal flaws in the Motion for Class Certification.

4. For all of these reasons, Defendant seeks a Sur-Reply opportunity – limited to ten (10) pages – in order to provide useful and targeted responses to the new jurisdictional arguments and other new (or modified) arguments regarding class certification raised in Plaintiff's forty-page Reply.

5. Counsel for Plaintiff on November 27, 2007, agreed that he would not oppose Defendant's motion for a ten-page sur-reply (with the understanding that Defendant would not oppose Plaintiff's Motion for Leave to File Excess Pages).

6. In short, Defendant respectfully submits that the Court will benefit from the clarifications and additional information to be provided in Defendant's short and concise Sur-Reply, and no party will be prejudiced by this limited response. For all of the reasons set forth

¹ Defendant recognizes that Plaintiff's Motion for Leave to File Excess Pages is contrary to the Court's practices and procedures, which provide that "[a]ny party seeking to exceed the page limitation for briefs must await the approval of the court before filing the brief." ("General Information" section, <http://www.ded.uscourts.gov/GMSmain.htm>). Defendant also recognizes that Plaintiff did not seek Defendant's consent before filing that Motion. However, in the interest of judicial efficiency, if the Court is not inclined on its own to deny that Motion, Defendants have agreed not to oppose that Motion.

above, Defendant respectfully requests that the Court enter an Order, in the form attached hereto, granting Defendant leave to file a ten-page Sur-Reply Brief.

Respectfully submitted,

/s/Daniel M. Silver

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Dated: November 28, 2007

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v.)

TRUGREEN LIMITED PARTNERS)
and TRUGREEN, INC. d/b/a)
TRUGREEN CHEMLAWN,)

Defendants.)

Civil Action No. 06-185 GMS

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2007, upon careful consideration of the foregoing Unopposed Motion for Leave to File a Sur-Reply Brief in Further Opposition to Plaintiff's Motion for Class Certification, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the foregoing Motion will be and is hereby GRANTED. Defendant is hereby ORDERED to submit its Sur-Reply to Plaintiff's Reply Brief in Support of Motion for Class Certification, not to exceed ten (10) pages in length, on or before ten (10) days of the date of this Order.

BY THE COURT,

United States District Judge Gregory M. Sleet

CERTIFICATE OF SERVICE

I, Daniel M. Silver, hereby certify that on November 28, 2007, I caused a copy of the foregoing documents to be served upon the following counsel of record via the CM/ECF file and serve system.

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/s/ Daniel M. Silver
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